In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 11672 of 1988

Date of Decision: 16.3.2007

R.N. Srivastava

....Petitioner

Versus

Haryana State Co-operative Supply and Marketing Federation Ltd.

....Respondent.

Coram:- Hon'ble Mr.Justice J.S. Khehar.

Present: Mr. K.G. Chaudhary, Advocate
for the petitioner.

Mr. C.B. Goel,, Advocate
for the respondent.

...

J.S. Khehar, J.

The Common Cadre Rules formulated by the Haryana State Co-operative Supply and Marketing Federation Ltd. (hereinafter referred to as the Hafed), incorporated three posts of experts described as (i) Development Officer (Processing) (ii) Development Officer (Fertilizer) and (iii) Development Officer (Marketing). These posts were originally in the pay scale of Rs.700-1200/1250. The scales of the aforesaid posts were subsequently revised to Rs.800-1300.

The Board of Directors of the Hafed in a meeting held on 16.4.1979 created the post of Development Officer (Storage)/Manager (Storage) in the pay scale of Rs.800-1300, i.e. in the pay scale as was available to the existing posts with the same common nomenclature of

Development Officers.

It would be pertinent to mention that 75% financial burden of the creation of the new post of Development Officer (Storage) was to be shouldered by the National Co-operative Development Corporation (hereinafter referred to as the NCDC). Therefore, consequent upon the creation of the post of Development Officer (Storage), the Hafed sought an approval of the aforesaid post in the pay scale of Rs. 800-1300 from the NCDC. The NCDC accorded its approval to the creation of the post of Development Officer (Storage) in the pay scale of Rs.800-1300 in terms of the decision of the Board of Directors of the Hafed dated 16.4.1979. This approval was granted by the NCDC on 8.6.1979.

Having fulfilled all formalities in respect of creation of the post of Development Officer (Storage), the Hafed issued an advertisement in the Tribune Dated 5.5.1981, inviting applications for the post of Development Officer (Storage) in the pay scale of Rs.800-1300. The petitioner applied for the aforesaid post well before the last date of submission of application forms. The petitioner participated in the process of selection, wherein he had appeared in an interview conducted on 3.7.1981. Having been found the most suitable amongst the candidates, the petitioner was placed at serial No.1 in the merit list. The deliberations of the Selection Committee were then placed before the Board of Directors, whereupon a resolution was passed which is reproduce as under:-

> "...Sh. R.N. Shrivastava, is at present working as District Manager, Punjab State Ware-housing Corporation. His main job was storage of various types of Agri. Produce, he had experience of storage while he was working as Divisional

> Manager U.P. Hill Development Corporation, Lucknow, from 1968-1974, though he drifted from his basic subject for some time when he worked in Punjab Saltpetre Refinery Ltd. And Mansingka Industries, yet he was found to have sufficient knowledge of various storage problems and necessary rectifying measures required for them. He was therefore found suitable for the post and hence selected in the scale as advertised on usual terms and conditions. It was fully explained to Sh. Shrivastava that he would be required to fill up a bond to serve the federation for a minimum period of three years."

A perusal of the determination rendered at the hands of the Board of Directors of the Hafed depicts, that the selection of the petitioner against the post of Development Officer (Storage) in the pay scale of Rs.1300-1800 was approved.

Despite the fact, that the advertisement in response to which the petitioner had applied for appointment against the post of Development Officer (Storage) indicated the pay scale of Rs.1300-1800, and the meeting of the Board of Directors, likewise approved the selection of the petitioner against the post of Development Officer (Storage) in the pay scale of Rs.1300-1800, yet the Hafed issued an offer of appointment to the petitioner on 25.1.1983 as Development Officer (Storage) in the pay scale of Rs.1200-1700 "...likely to be revised to that of Rs.1300-1800." The petitioner having accepted the aforesaid offer of appointment, was issued an appointment order against the post of Development Officer (Storage) in the pay scale of Rs.1200-1700 with an initial start of Rs. 1200/- per month.

On the receipt of his offer of appointment dated 25.1.1983, as well, as the appointment order dated 2.3.1983, the petitioner started making representations to the respondents seeking pay in the scale of Rs.1300-1800. Since, the claim of the petitioner was not favourably considered, he approached this Court by filing the instant writ petition.

In order to substantiate the claim of the petitioner, learned counsel for the petitioner has raised a variety of contentions. First of all, it is submitted that the petitioner cannot be deprived of the pay scale of the post as was approved by the Board of Directors at the time of its creation. In this behalf, it is pointed out, that the Board of Directors created the post of Development Officer (Storage) in the pay scale of Rs.1300-1800, and that, the aforesaid determination was also approved by the NCDC which is to shoulder 75% of the financial burden for the creation of the said post, and therefore, there was no justification for the respondents in depriving the petitioner the pay scale of Rs.1300-1800 at the time of his induction into service. The second contention of the learned counsel for the petitioner is, that all the posts of Development Officer must be deemed to constitute a common cadre of experts. In this behalf, it is pointed out, that the post of Development Officer (Processing), Development Officer (Fertilizer) and Development Officer (Marketing) were all in the pay scale of Rs.800-1300 at the time of the petitioners induction into the service of the Hafed, and as such, the petitioner was entitled to the pay scale of Rs.800-1300 at the time of his appointment as Development Officer (Storage). The action of the respondents in not allowing the petitioner the same pay scale, as has been laid down for the cadre of Development Officers, according to the learned counsel for the petitioner, results in an invidious discrimination against the

petitioner. Thirdly, it is submitted, that post under reference was advertised in the pay scale of Rs.1300-1800, and further that, on his selection the Board of Directors approved the appointment of the petitioner in the scale of Rs.1300-1800, accordingly, it is asserted, that this action of the respondents in depriving him of the aforesaid pay scale is totally arbitrary. Fourthly, it is contended, that there is no justification for granting the pay scale of Rs.700-1200 to the petitioner. In this behalf, it is pointed out, that there is no order passed at the hands of the Board of Directors of the Hafed, earmarking the scale of Rs.700-1200 for the post of Development Officer (Storage). At this juncture, it would be pertinent to mention, that the scale of Rs.700-1200 was revised to Rs.1200-1700, whereas, the scale of Rs.800-1300 was revised to Rs.1300-1800, and as such, only if the respondents had approved the scale of Rs.700-1200 for the post of Development Officer (Storage), he could have been appointed against the scale of Rs.1200-1700. Since, that did not happen, the action of the respondents in issuing an offer of appointment against the post of Development Officer (Storage) to the petitioner on 25.1.1983 in the pay scale of Rs.700-1200, and thereafter, an order of appointment dated 2.3.1983 appointing the petitioner against the post of Development Officer (Storage) in the pay scale of Rs.1200-1700 was clearly unacceptable in law.

Despite the fact, that the instant writ petition was filed as far back as in 1988, no written statement has been filed on behalf of the respondents. It is therefore, apparent that in sum and substance, the factual position depicted in the pleadings of the instant writ petition has remained unrepudiated. Even the veracity of the annexures to the writ petition is not a matter of dispute.

In view of the factual position noticed hereinabove, we are satisfied, that the instant writ petition deserves to be allowed. The petitioner was selected and appointed against the post of Development Officer (Storage) in furtherance of an advertisement dated 5.5.1981. As per the aforesaid advertisement, the advertised post was in the pay scale of Rs.1300-1800. When the post of Development Officer (Storage) was created by the Board of Directors in its meeting held on 16.4.1979, the same was created in the pay scale of Rs.800-1300 (which was subsequently revised to Rs.1300-1800). Even the selection of the petitioner against the post of Development Officer (Storage) was approved by the Board of Directors in the pay scale of Rs.1300-1800. As such, there can hardly be any justification for the respondents to deprive the petitioner the pay scale of Rs.1300-1800 at the time of his induction into service.

It is not necessary for us, for the purposes of adjudication of the instant controversy, to deliberate, whether or not, the petitioner had the right to be appointed in the pay scale of Rs.1300-1800 on account of the fact that the other post of experts designated as Development Officer (Processing), Development Officer (Marketing) and Development Officer (Fertilizer) were in the pay scale of Rs.800-1300. An effective determination cannot be rendered on this issue on account of the fact, that there is no material on the record of this case to indicate, that the posts were ever equated for the purpose of the pay scales. We, therefore, refrain from recording any finding on this issue. Since we have already concluded hereinabove, that the petitioner was entitled to be appointed as Development Offer (Storage) in the pay scale of Rs.1300-1800, there really remains no necessity to examine this aspect of the matter.

In view of the conclusion drawn in the paragraph preceding the foregoing paragraph, I am of the view, that the post of Development Officer (Storage) was originally created in the pay scale Rs.800-1300 which was subsequently revised to Rs.1300-1800, and thereafter, again revised to Rs.3000-4500. The pleadings of the case reveals, that there was scale to scale revision of the posts in the Hafed. It is not, as if, any other post in the pay scale of Rs.800-1300 at the time when the post of Development Officer (Storage) was created, has been placed in any other scale than the revised scale of Rs.1300-1800, and thereafter, in the revised scale of Rs.3000-4500. In view of the above, I am of the view that the petitioner is entitled to the pay scale of Rs.1300-1800 at the time of his induction into service, and thereafter, the pay scale of Rs.3000-4500 with effect from the date the pay scale of Rs.1300-1800 was revised to Rs.3000-4500. The pay of the petitioner shall, accordingly, be notionally fixed, first in the pay scale of Rs.1300-1800, and thereafter, in the pay scale of Rs.3000-4500, as was given to all other posts in the organization. Having fixed the pay of the petitioner, he shall be allowed arrears due to him within a period of three months from the date of receipt of a certified copy of this order. The petitioner shall, however, be entitled to arrears limited to three years and two months prior to the date of filing of the instant writ petition. For the aforesaid purpose, it is also clarified, that the instant writ petition came to be filed on 20.12.1988.

Allowed in the aforesaid terms.

(J.S. Khehar)
Judge.

16.3.2007
sk.